Tina Pidgeon
General Counsel
2550 Denali Street, Suite 1000
Anchorage, AK 99503
TPidgeon@GCI.com
(907) 868-5312

July 25, 2019

Ex Parte via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Promoting Telehealth in Rural America, WC Docket No. 17-310

Dear Ms. Dortch:

In our recent meetings, GCI Communication Corp. ("GCI") has suggested that the proposed new processes to set urban and rural rates for the Telecommunications Program set forth in the Draft Rural Health Care ("RHC") Order[1] raise a number of significant questions especially as they would apply to Alaska. We suggested, therefore, that resolving these questions would best be accomplished through a Further Notice of Proposed Rulemaking. GCI continues to believe that a Further Notice is the best path forward. In the event the Commission nonetheless proceeds with an order that includes decisions on rate provisions, however, we respectfully suggest five targeted adjustments to certain provisions of the Draft Order, which would apply to Alaska, as set forth below.

We recognize that these approaches may require additional implementation time. The Draft Order seeks to simplify rural rate determinations; however, implementation under the proposed methodology will be extremely challenging. Moreover, because the USAC-determined median rate for similar services in a given community grouping (rurality tier in the Draft Order) will be a ceiling on the amount a carrier can receive in total for providing service to the rural healthcare provider, it is critical to be as accurate as possible in defining "comparable" communities and "similar" services. Taking steps to mitigate these challenges is especially critical for rural Alaska, where insufficient rates will restrict cost recovery and necessary network investments, each of which are integral to meeting the healthcare service needs of our communities. Accordingly, in the event the Commission moves to adopt an order only, GCI is hopeful that the Commission will take steps now to help avoid the possibility of unintended negative consequences.[2]

First, *recognize further delineations of rurality within the "Extremely Rural" designation for Alaska*. In adopting the three rurality tiers, the Draft Order recognizes that a more precise

[1] *Promoting Telehealth in Rural America*, DRAFT Report and Order, WC Docket No. 17-310 (rel. July 11, 2019) ("Draft Order").

[2] In proposing these modifications, GCI is not conceding that USAC's role is appropriate.

means of determining rurality would prevent rates in the most rural areas from being unfairly reduced by being combined with rates from less rural areas."[3] As it would apply to Alaska, however, almost all communities would be classified as "Extremely Rural." By grouping almost all of Alaska into one category, the Draft Order overlooks the substantial geographic and cost of service differentials across the state. To capture a reasonable estimation of the state's unique variability, we suggest that the Draft Order include four "Extremely Rural" subcategories, as follows:[4]

a. Road-system/fiber-served
b. Off-road-system/fiber-served
c. Off-road-system/terrestrially (non-fiber) served
d. Satellite-only served

The Wireline Competition Bureau already has data to implement these subcategories for most Extremely Rural Alaska communities because of the backbone network data reporting already done by the Alaska Plan participants. With respect to any Extremely Rural communities not served by an Alaska Plan participant, the Commission could request that providers identify, in a one-time collection, into which subcategory the community would belong. This data likely could be supplied by a very small number of carriers, which would also have an incentive to supply the data.

Second, *replace the range of capacity for rate arrays at the low end with a minimum 30 Mbps range, applied using a per Mbps comparison among similar services*. The 30 percent bandwidth range set forth in the Draft Order[5] is only theoretically reasonable within a mid-range of capacity. This percentage is expansive for large bandwidth circuits, *e.g.*, from 700 Mbps to 1.3 Gbps for a 1 Gbps circuit, but extremely narrow for small circuits, *e.g.*, from 3.5 Mbps to 6.5 Mbps for a 5 Mbps circuit. This low-end/high-end disparity can be addressed by applying the greater of either the 30 Mbps range or 30 percent.[6]

In addition, to ensure an apples-to-apples assessment of the median, it is necessary to compare all the rates for similar services within the 30 Mbps capacity range on a per Mbps basis.

---

[3] *See* Draft Order at ¶ 33.

[4] We note that these designations are similar to those previously proposed by ACS, with an additional designation for off-road-system/terrestrially (non-fiber) served. *See* Letter from Karen Brinkmann to Marlene H. Dortch, WC Docket No. 17-310, at 2 (filed July 19, 2019). By grouping fiber-served, off-road communities into the same geographical category with terrestrial (non-fiber) served, off-road communities, however, ACS's new proposal for a single off-road tier would compare communities with vastly different underlying infrastructure and network cost characteristics. For instance, ACS's proposal would compare Sitka–a fiber-served community of almost 9,000 in Southeast Alaska–with Kiana–a village of 300 people located north of the Arctic Circle and served by a microwave network that does not have the almost unlimited capacity of fiber. Similarly, it would equate the regional center of Kotzebue, served by both Quintillion fiber and GCI microwave, with the village of Koyuk, which is almost 150 miles away but not connected by roads, and is served only by microwave. Comparing prices for services in such dissimilar communities will most certainly result in under-recovery of costs in the much more isolated rural village.

[5] Draft Order ¶ 15.

[6] The Commission could also reasonably use a minimum range of 40 Mbps, the range in the existing DS3 safe harbor, or 50 Mbps, the Ethernet equivalent of a DS3.

This approach will address that customers purchasing at different capacities would not be paying the same total rate, even if all other service attributes were the same.[7]

Third, *adequately capture necessary "similar service" attributes, and test data sufficiency*. The Draft Order correctly observes "that factors other than bandwidth are relevant to whether a service is functionally similar" and anticipates that healthcare providers will indicate "whether they require a dedicated service *or other service level guarantees* when they seek bids for eligible services."[8] The Draft Order also reasonably requires that "a dedicated service or other service level guarantees" be taken into account for similar services.[9]

GCI supports the Commission's determination that such "other service level guarantees" must be considered in making the "similar service" assessment, and the process for doing so must be transparent and established at the front end of the transition to a new system. Given the critical importance of an apples-to-apples comparison, GCI requests that the Commission mandate that USAC's database distinguish the following:

1. Capacity;
2. Method of service delivery;
3. Best efforts or dedicated service;
4. Level of prioritization;
5. Protected/redundant service (Yes or No); and
6. Symmetric or asymmetric services.

In order to capture a meaningful data collection, GCI suggests that the Commission direct USAC to undertake a pilot data collection, which would help to ensure that the large-scale data collection effort is appropriately and sufficiently designed, reasonably expected to collect the necessary data, and transparent as to the service attributes that will be relied upon for grouping similar services as part of the rate-setting exercise. In addition, in order to satisfy its desire for sufficient inputs for determining median rates, GCI suggests that the Commission direct USAC to require service providers to submit all rates for similar services to the extent provided in low population, extremely rural locations. This step would help to establish a median rate even in those areas where fewer customers purchase customized services.

Fourth, *clarify the median rate methodology*. The Draft Order proposes to use a median rate assessment to establish a rate for healthcare services. GCI suggests that the Commission address three discrete methodology points by including additional details necessary to make the calculation:

---

[7] For example, a customer purchasing a 5 Mbps service would not pay the same total rate as a customer purchasing a 35 Mbps service.
[8] *Id.* ¶ 17 (emphasis added).
[9] *Id.*

1. *All* rates must be included in the similar services data array, even where the same rate is charged to multiple customers (given that this is the only way to appropriately affect the weighting of the rate among all similar services);
2. If the data points in the similar services data array happen to be an even number, then the "median" will be defined as the average (i.e., arithmetic mean) of the two data points that bracket where the median would land were there an odd number of data points in the array;
3. Similar services will be deemed as such for at least a three-year period, counting the current funding year; and
4. Publish the rates at least six months in advance of the opening of the filing window.

Fifth, *allow established median rates and rates previously set through the cost study prong of 47 C.F.R. 54.607(b) to apply for the permissible length of an evergreen contract, and establish transitional safe harbors*. One of the benefits sought by the Commission in this proceeding is to establish some certainty for program participants that rates and rate levels will not be adjusted once contracted and offered, whether by operation of a rural rate justification or overall demand growth. In the absence of guaranteed full payment, which is not practical given changing and unpredictable demands on the fund over time, the Commission would place program participants in a far better position to make informed decisions by allowing reliance on approved rates for the maximum permissible period for an evergreen contract, whether the rate was established via a currently effective review process or under the new rules.

This approach will preserve the value of Commission resources already expended, afford greater participant certainty under the rules (thereby promoting competitive participation in the program), and grant greater focus on and dedication of resources to a smaller set of services. Likewise, we agree with ACS's proposal that evergreen contracts in place at the time the new rules go into effect should be honored and that until the new rules go into effect, any rate for a service that is equal to or less than a previously funded rate will be deemed compliant.

Sincerely,

Tina Pidgeon
General Counsel, Chief Compliance Officer and Senior Vice President, Governmental Affairs

Cc:

Preston Wise	Travis Litman
Arielle Roth	Randy Clarke
Joseph Calascione	Trent Harkrader